

[J-114A&B-2019]
**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA AND LORRAINE HAWK

v.

: No. 83 MAP 2019

: Appeal from the Order of the
: Commonwealth Court No. 578 MD 2019
: dated 10/30/19 which granted
: preliminary objection

KATHY BOOCKVAR, THE ACTING
SECRETARY OF THE
COMMONWEALTH

APPEAL OF: SHAMEEKAH MOORE,
MARTIN VICKLESS, KRISTIN JUNE
IRWIN AND KELLY WILLIAMS

■ ■ ■ ■ ■

SUBMITTED: November 1, 2019

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA AND LORRAINE HAW.

Appellees

v.

: No. 84 MAP 2019

: Appeal from the Order of the
: Commonwealth Court No. 578 MD 2019
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: preliminary objection

KATHY BOOCKVAR, THE ACTING
SECRETARY OF THE
COMMONWEALTH

Appellant

: SUBMITTED: November 1, 2019

DISSENTING STATEMENT

I respectfully dissent, since I would reverse the Commonwealth Court's order restraining the constitutional amendment process which the General Assembly has implemented in connection with tomorrow's election.

Although I am certainly given pause by some of the substantive analysis contained in the Commonwealth Court's opinion, from my point of view that court's novel approach to enjoining a tabulation and certification of duly-cast votes pending its ongoing review has significant potential to foster uncertainty amongst the electorate, and therefore, to impact upon the election's outcome. The Commonwealth Court appears to have placed the burden on the acting Secretary of the Commonwealth to prove such impact, see *League of Women Voters of Pa. v. Boockvar*, 578 M.D. 2019, *slip op.* at 16 (Pa. Cmwlth. Oct. 30, 2019); whereas, from my point of view, the burden rested squarely upon Appellees, as the challengers to a proposed amendment to the state Charter approved through the course of multiple legislative sessions. The Commonwealth Court also has provided little analysis of how the preliminary injunction affects the operation of other provisions of the Election Code, which again, would seem to create unnecessary uncertainty.

I also believe that the requirement for a challenger to prove a likelihood of success on the merits should be elevated in the context of an attack on presumptively valid actions by the Legislature. Indeed, the very term "likely to prevail on the merits" signifies more than merely a "substantial legal question." *Id.* at 21. It means, at a minimum, that the party seeking preliminary relief must show it is more likely than not to prevail on that question.

In all events, if a restraint were in fact necessary, I would suggest that it should be the most minimal possible to achieve the desired result. And in this respect, I have

difficulty apprehending why the Commonwealth Court would bar a mere tabulation of duly-cast votes of the electorate (as contrasted with enjoining only certification and effectiveness). See *generally* Brief for the Secretary of State at 9 (arguing that newspapers have been widely reporting that the votes on the proposed amendment will not be counted, and it is reasonable to suggest that many voters' behavior may be altered if they believe their vote will not be counted). As such, I would at least vacate the Commonwealth Court's order to the extent it restrains tabulation or counting of the votes.

Justices Dougherty and Mundy join this dissenting statement.